

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 431/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

SEC Industries Private Limited, Vs. Deputy Commissioner of
Hyderabad Income Tax,
[PAN : AADCS4199N] Circle-3(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A. Srinivas, AR
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 10/01/2024
घोषणा की तारीख/Pronouncement on: 11/01/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 15/07/2022 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of SEC Industries Private Limited ("the assessee") for the assessment year 2016-17, assessee preferred this appeal.

2. Brief facts of the case are that assessee is a private limited company engaged in the business of manufacturing and supply of

components, engineering systems to various Defence units and other customers. For the assessment year 2016-17, it filed the returns on 09/06/2016 declaring total income of Rs.17,34,20,620/- under normal provisions of the Income Tax Act, 1961 ('the Act') and admitted an income of Rs.17,58,28,654/- under section 115JB of the Act under MAT provisions. Assessment was completed by disallowing a total sum of Rs.1,22,49,634/-, making addition on account of Consultancy charges paid to the tune of Rs.1,12,50,000/-, liquidated damages of Rs. 5,54,406/- and other expenses Rs. 4,45,228/-.

3. Aggrieved, assessee preferred appeal before the learned CIT(A), and submitted that the assessee incurred an amount of Rs.5,54,406/- as liquidated damages which were incurred for the delay in the delivery of its goods. Assessee further pleaded that the liquidated damages are nothing more than damages agreed to in advance if there is a delay in the delivery of its supplies and that such charges are not penal in nature and are not levied for any violation of law or Act in force.

4. Learned CIT(A), however, while deleting the other additions, confirmed the addition of Rs.5,54,406/- towards liquidated damages, but did not assign any reasons. Hence the assessee preferred this appeal, reiterating its stand before the learned CIT(A). Learned AR submitted that an essential requisite of any contract is a timely discharge of agreed terms and conditions, any failure to do so usually results in payment of damages by one party to another to indemnify against losses and such damages are referred to as penalty or liquidated damages. He placed reliance on the decision of the Full Bench of the Hon'ble Punjab and Haryana High Court in the case of Jamna Auto Industries vs. CIT reported in 299 ITR 92.

5. Per contra, learned DR placed heavy reliance on the orders of the authorities below.

6. We have gone through the record in the light of the submissions made on either side. It could be seen from the impugned order that the assessee has raised this issue before the learned CIT(A) and argued that the cause to pay the sum of Rs. 5,54,406/- had arisen out of the contractual relationship for the delay in supply of the agreed goods and, therefore, it has no element of criminality or penalty. Learned CIT(A), however, missed this and simply observed that “as regards other additions, the order of the AO is upheld”.

7. Even before us also the facts stated by the assessee before the authorities have not been controverted. It is the settled principle of law that Section 37 of the Act is the residuary provision, granting deduction of an expenditure not being expenditure of the nature of capital expenditure or personal expenses of the assessee, which is laid out or expended wholly and exclusively for the purposes of business or profession and not specified in sections 30 to 36 of the Act. Explanation to section 37(1) clarifies that any expenditure incurred by an assessee for any purpose which is an offence, or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

8. The impugned expenditure in this case was purely in relation to the assessee's normal business activity and was inherent part of its business transactions. Even according to the Revenue, the expenditure

was certainly not incurred for any purpose which is an offence, or which is prohibited by law.

9. In the decision reported in the case of Jamna Auto Industries (supra), the Hon'ble Punjab and Haryana High Court considered this issue and while highlighting the difference between the penalty for infraction of law and damages for breach of contract in the context of deduction under section 37(1) of the Act, held that whenever damages are to be paid by an assessee for a breach of contract, such damages are treated to be normal expenses of business. Hon'ble High Court further held that where an assessee has to pay damages to other party to fulfil the contract entered into by him in the ordinary course of his business, the amount of damages paid is allowable deduction if it is in the ordinary course of business and is not opposed to public policy.

10. This decision is applicable to the facts of the present case on all fours and while respectfully following the same, we hold the issue in favour of the assessee and direct the learned Assessing Officer to delete the addition so made. Grounds of appeal are accordingly allowed.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 11th day of January, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 11/01/2024

TNMM

Copy forwarded to:

1. SEC Industries Private Limited, C/o. Raju and Prasad Chartered Accountants, Flat No. 401, Diamond House, Adj. to Amrutha Hills, Punjagutta, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-3(1), Hyderabad.
3. Pr.CIT-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD